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26
27 **IN THE UNITED STATES DISTRICT COURT**
28 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

21 SIERRA CLUB,

22 Plaintiff,

23 v.

24 GINA McCARTHY, Administrator of the
25 United States Environmental Protection
26 Agency,

27 Defendant.

Case No.: 3:12-cv-06472-CRB

JOINT STATUS REPORT

1 On March 29, 2013, the Court stayed “[a]ll proceedings in this matter . . . until the
2 Supreme Court issues a opinion or otherwise terminates review” in EME Homer City
3 Generation, L.P. v. Environmental Protection Agency, 696 F.3d 7 (D.C. Cir. 2012) (Dkt.
4 No. 29). The Supreme Court issued an opinion in that case on April 29, 2014.
5 Environmental Protection Agency v. EME Homer City Generation, L.P., 134 S.Ct. 1584
6 (2014). On May 14, 2014, the Court stayed proceedings for an additional 60 days to
7 allow the parties to evaluate the impact of that opinion (Dkt. No. 31). On August 7,
8 2014, the parties filed a joint status report (Dkt. No. 32). On August 11, 2014, pursuant
9 to a stipulation, the Court continued the stay of this case until November 15, 2014 (Dkt.
10 No. 33). In the same order, the Court ordered the parties to submit a joint status report by
11 September 15, 2014. Therefore, the Parties are filing this status report pursuant to the
12 Court’s August 11, 2014 order.

13 The parties have engaged in settlement discussions. The parties have reached a
14 tentative agreement on a number of the deadlines at issue in the matter. As to the
15 remaining deadlines, Sierra Club is awaiting additional information from Defendant. If
16 the parties are able to reach tentative agreement on all the deadlines, the parties will work
17 to memorialize their agreement in a proposed Consent Decree. Counsel will then submit
18 the proposed Consent Decree to their respective parties for final approval. Approval of
19 the settlement on behalf of Defendant requires review by the appropriate officials of the
20 U.S. Environmental Protection Agency (“EPA”) and the U.S. Department of Justice as
21 well as compliance with 42 U.S.C. § 7413(g). Approval of the settlement on behalf of
22 Plaintiff requires review and approval by multiple people in Sierra Club, some of whom
23 are volunteers.

24 Upon approval of the parties, Defendant Gina McCarthy, Administrator of the
25 EPA, will lodge a proposed Consent Decree with the Court. The proposed consent
26 decree should not be signed or entered by the Court at that time. Pursuant to section
27 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), the Consent Decree is not final and
28 cannot be entered by the Court until the EPA Administrator provides “a reasonable

1 opportunity by notice in the Federal Register to persons who are not named as parties or
 2 intervenors to the action” to comment in writing upon the proposed decree. After a
 3 reasonable public comment period, the EPA Administrator and the Attorney General, as
 4 appropriate, must promptly consider any written comments received. Id. If the federal
 5 government elects not to withdraw or withhold consent to the proposed Consent Decree,
 6 EPA will promptly file a motion requesting that the Court enter the Consent Decree.

7 Accordingly, the Parties request that the Court leave the current stay in place.
 8 The parties will submit another joint status report on October 13, 2014 to advise the
 9 Court of their progress in resolving this case without further litigation or Sierra Club will
 10 request a briefing schedule if it appears that a settlement cannot be reached.

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 12 Respectfully submitted,

13
 14 /s/ Robert Ukeiley

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Attorneys for Defendant

Dated: September 15, 2015

ORDER

The parties shall submit a joint status report by October 13, 2014.

DATED this 39th day of September, 2014.

CHARLES R. BREYER
UNITED STATES

